

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

X

In re:

JUSTINO GARCIA

Debtor(s).

X

SIRS / MADAMS

**Return Date: April 14, 2015**  
**Time: 10:00 a.m.**

Chapter 13  
Case No.: 11-50856-608

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE**, that MICHAEL J. MACCO, Chapter 13 Trustee of the above captioned estate, will move before the Honorable Carla E. Craig, United States Bankruptcy Judge on the 14TH day of APRIL, 2015 at 10:00 a.m., at the United States Bankruptcy Court located at 271 Cadman Plaza East-Courtroom 3529, Brooklyn, NY 11201, for an Order pursuant to 11 U.S.C. §1307(c), dismissing this case, by reason of the debtor(s)' default in making timely monthly plan payments under the Chapter 13 Plan, and for such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that answering papers, if any, shall be filed with the Court and served upon the undersigned no later than three (3) days prior to the return date of this motion.

Dated: Melville, New York  
March 27, 2015

Yours, etc.

MICHAEL J. MACCO  
Chapter 13 Trustee  
135 Pinelawn Road, Suite 120 South  
Melville, New York 11747  
(631) 549-7900

To: *Office of the United States Trustee*  
*Justino Garcia, Debtor*  
*Donna M. Fiorelli, Esq., Attorney for Debtor*  
*Aurora Loan Services, Inc., Creditor*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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**tmm1634**

In re:

JUSTINO GARCIA

Chapter 13  
Case No.: 10-50856-608

Debtor(s).

**APPLICATION**

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TO THE HONORABLE CARLA E. CRAIG, UNITED STATES BANKRUPTCY JUDGE:

MICHAEL J. MACCO, Chapter 13 Trustee in the above captioned estate, respectfully represents as follows:

1. The debtor(s) filed a petition under the provisions of 11 U.S.C. Chapter 13 on November 17, 2010, and thereafter MICHAEL J. MACCO was duly appointed and has qualified as Trustee.
2. The debtor(s)' plan was confirmed by Order of this Court on February 1, 2011.
3. The debtor(s)' plan provides for payment to the Trustee in the sum of \$1,000.00 per month, for a period of two (2) months; then \$1,275.00 for the remaining fifty-eight (58) months. In addition, the plan pledges all tax refunds received over the life of the plan to the Trustee for distribution to creditors.
4. The debtor(s) is in default in that the Trustee is owed the sum of \$8,368.19, representing more than four (4) monthly plan payments. This amount includes all plan payments due to the Trustee until the return date of this motion.
5. Furthermore, in the event this motion is adjourned to a later date, the Trustee requests that the motion be amended to include as arrearage, all payments that accrue from the date of the scheduled hearing until the adjourned hearing.
6. This is a material default and is prejudicial to the rights of the creditors of the debtor(s).

**WHEREFORE**, the Trustee prays for an Order pursuant to the provisions of 11 U.S.C. §1307(c), dismissing this case, and for such other and further relief as this Court deems just and proper.

Dated: Melville, New York  
March 27, 2015

/s/ Michael J. Macco

Michael J. Macco, Chapter 13 Trustee  
135 Pinelawn Road – Suite 120 South  
Melville, New York 11747  
(631) 549-7900

STATE OF NEW YORK )  
COUNTY OF SUFFOLK ) ss.:

SHAWNA O'CONNELL, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age, and resides in Nassau County, New York.

On March 27, 2015, deponent served the within:

**NOTICE OF MOTION AND APPLICATION**

upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of same, enclosed in a post-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

*Office of the United States Trustee  
U.S. Bankruptcy Court  
201 Varick Street, Ste. 1006  
New York, NY 10014*

*Justino Garcia  
85-62 Forest Parkway  
Jamaica, NY 11421*

*Donna M. Fiorelli, Esq.  
1800 Walt Whitman Road  
Suite 155  
Melville, NY 11747*

*Aurora Loan Services  
c/o Royston A. Mendoza, Esq.  
220 Northpointe Parkway, Suite G  
Amherst, NY 14228*

/s/ Shawna O'Connell  
SHAWNA O'CONNELL

Sworn to before me this  
27<sup>TH</sup> day of MARCH, 2015

/s/ Janine M. Zarrilli

NOTARY PUBLIC

Janine M. Zarrilli  
Notary Public, State of New York  
No. 01ZA5084708  
Qualified in Nassau County  
Commission Expires September 8, 2017